

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 05-O-00089-PEM
)	
Arthur Egbert Fisher)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 91650)	
)	
<u>A Member of the State Bar.</u>)	

In this original disciplinary proceeding respondent **Arthur Egbert Fisher** was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has found that respondent successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for one year subject to certain conditions. (Rules Proc. of State Bar, rule 803.)¹

II. Significant Procedural History

On May 17, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case No. 05-O-00089. The matter was assigned to the Honorable JoAnn M. Remke.

¹ References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

Following the filing of the NDC respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP). On June 29, 2006, respondent completed the LAP intake interview, and signed the pre-enrollment evaluation plan. The next day, on June 30, 2006, respondent submitted a declaration to the court, which established that at the time of his misconduct, respondent was suffering from mental health and substance abuse issues. Thereafter, in September 2006, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). Respondent's declaration and the stipulated facts, as well as a report, which was also submitted to the court in September 2006, regarding an independent medical examination of respondent that was conducted by a licensed clinical psychologist, establish a causal connection between respondent's substance abuse and mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his substance abuse and mental health issues and his misconduct in this matter, i.e., that his substance abuse and mental health issues directly caused the misconduct set forth in this matter.

On October 31, 2006, the proceeding was reassigned to the undersigned judge, effective November 1, 2006.

On January 8, 2007, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the parties' stipulation was lodged with the court; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on January 8, 2007.

On February 25, 2010, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program — Substance Use (certificate). The certificate from a mental health professional confirms that respondent complied with the requirements set forth in the in LAP Participation Agreement/Plan for one year prior to the date of the certificate, and that during that one-year period, respondent satisfied all lab testing requirements set forth in his participation agreement plan and that no unauthorized substances were detected.

Thereafter, on March 1, 2010, the court filed an order finding that respondent had successfully completed the ADP and ordered the stipulation that was lodged on January 8, 2007, to be filed. The court also indicated that it would issue this decision recommending to the Supreme Court the imposition of the lower level of discipline reflected in the Statement.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and filed on March 1, 2010, is incorporated by reference as if set forth fully herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter. Specifically, respondent stipulated to professional misconduct, including holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar and committing acts of dishonesty by making misrepresentations.

At the time respondent engaged in his misconduct, he was suffering from substance abuse and mental health issues that directly caused or contributed to the misconduct, which forms the basis of this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of

rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.) Similarly, Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that those emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186; 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Here, respondent has been participating in the LAP since 2006, and has successfully completed the ADP. Respondent's successful completion of the ADP, as well as the certificate from a mental health professional, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse and mental health issues that led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,² std. 1.2(e)(iv).)

IV. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

² Future references to standard(s) or std. are to this source.

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court reviewed and considered the parties' recommendations regarding discipline and certain standards and case law, the parties' stipulation, setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his mental health issues and his misconduct in this matter. In particular, the court considered standards 1.2, 1.3, 1.6, 2.3, and 2.6, and *In re Silverton* (2005) 36 Cal.4th 81; *Howard v. State Bar* (1990) 51 Cal.3d 215; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920; and *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113. The court then advised the parties of the discipline that would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent was terminated from, or failed to successfully complete, the ADP.

After agreeing to the recommended discipline, respondent executed the contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP; and, as set forth in the order filed on March 1, 2010, the court found that respondent successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the Statement if respondent successfully completed the ADP.

V. Recommendations

A. Discipline

It is hereby recommended that respondent **Arthur Egbert Fisher**, be suspended from the practice of law in California for one year, that execution of that period of suspension be

stayed, and that he be placed on probation³ for a period of two years subject to the following conditions:

1. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address⁴ and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case

³ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

⁴ The court takes judicial notice of respondent's official membership records maintained by the State Bar, which shows that P.O. Box 5591, Ketchum, ID 83340 has been respondent's official membership records address since May 1, 2009.

number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
6. Respondent must attend a session of the State Bar Ethics School within six months of entering the ADP;⁵
7. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must

⁵ If, after being accepted into the Alternative Discipline Program on January 8, 2007, respondent successfully completed a session of the State Bar Ethics School as set forth in the Confidential Statement, and has provided satisfactory proof of such completion to the Office of Probation or will forthwith submit proof of such completion to the Office of Probation, respondent will have satisfied his Ethics School probation condition.

If, however, respondent has not provided proof of completion of the attendance at a session of the Ethics School and cannot do so forthwith, he must, within one year of the effective date of the discipline herein, provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session. In the alternative, if respondent, who resides in another jurisdiction (see footnote 4, *ante*), is unable to attend the State Bar Ethics School, he may attend a comparable remedial education course offered through a certified provider in the jurisdiction in which he resides and provide to the Office of Probation satisfactory proof of attendance and completion of the comparable remedial education course within one year of the date of discipline herein. But, prior to attending such remedial education course, respondent must provide satisfactory proof to the Office of the Chief Trial Counsel that said course is comparable to the course offered by the State Bar Ethics School.

immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP;

8. Respondent must abstain from use of any alcoholic beverages, and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription;

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

C. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is further recommended that Arthur Egbert Fisher be ordered to reimburse the Client Security Fund to the extent that the

misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

VI. Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: March ____, 2011

PAT McELROY
Judge of the State Bar Court